HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.14536 OF 2006

Between:

Dadala Arjun Rao

..... Petitioner

AND

The Government of Andhra Pradesh
Rep. by its Principal Secretary,
Panchayat Raj & Rural Development,
Hyderabad and others

.....Respondents

:: O R D E R::

Counsel for the Petitioner : Smt. Marie Desai

Counsel for Respondent Nos. 1, 3 to 5 : Government Pleader for Panchayat Raj

Counsel for Respondent No.2 : Shri V.V. Prabhakara Rao

Dated: 09.08.2006

Per G.S.SINGHVI, CJ

In this petition, petitioner – Dadala Arjun Rao, who claims to be a member of Scheduled Caste, has prayed for issue of a mandamus to the respondents to notify Gram Panchayat of Jammulapalli Village, Pithapuram Mandal, East Godavari District to any of the reserved categories viz. Scheduled Castes, Scheduled Tribes, Backward Classes and Women in accordance with Circular Memo No.5810/Elections & Rules/2006-7 dated 27.05.2006 read with G.O.Ms.No.220, Panchayat Raj & Rural Development (Elections & Rules) Department dated 25.05.2006. He has further prayed for restraining the respondents from conducting elections to Gram Panchayat, Jammulapalli.

In the affidavit filed by him, the petitioner has averred that in the elections scheduled to be held in July/August 2006, the office of Sarpanch of Gram Panchayat, Jammulapalli has been reserved for the candidates of Other Community, though, in terms of the Andhra Pradesh Panchayat Raj (Reservation of seats and offices of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 2006 (for short, 'the Rules'), the same should have been reserved for Scheduled Castes or Scheduled Tribes or Backward Classes or Women. He has further averred that on account of non-reservation of the office of Sarpanch for any of the reserved categories, the candidates of those categories have been deprived of their legitimate right to be elected to the office of Sarpanch.

In the counter-affidavit filed by Shri K. Nageswara Rao, Revenue Divisional Officer, Kakinada, East Godavari District, it has been averred that the office of Sarpanch has been earmarked for Other Category in accordance with the Rules. In paragraph 3 of his affidavit, Shri K. Nageswara Rao has averred that during the elections of 1995, the office of Sarpanch of Jammulapalli Gram Panchayat was reserved for Scheduled Castes and in 2001 it was unreserved. In the current election it has been shown unreserved in accordance with the Rules. In paragraph 4 of his affidavit, the deponent has averred that out of 24 villages of Pithapuram Mandal, 5 are reserved for Scheduled Castes and 6 for Backward Classes and the remaining are unreserved. Along with the affidavit, Shri Nageswara Rao has annexed working sheets showing population of Scheduled Tribes, Scheduled Castes and Backward Classes in descending order.

We have heard learned counsel for the parties. In our opinion, the writ petition is liable to be dismissed because,

a) in view of the bar contained in Article 243-O of the Constitution, a petition filed under Article 226 questioning election to the Gram Panchayat is not maintainable till the adjudication of the election dispute by an adjudicatory authority constituted under the law enacted by the State Legislature. This view of ours is based on the judgments of the Supreme Court in **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency**[1], **Durga Shankar Mehta v. Raghuraj Singh**[2], **Mohinder Singh Gill v. Chief**

Election Commissioner[3], **State of U.P. v. Pradhan Sangh Kshetra Samiti**[4], **Boddula Krishnaiah v. State Election Commissioner**[5], and **Election Commission of India v. Ashok Kumar**[6] and order dated 03-08-2006 passed in Writ Petition No.14068 of 2006 (**Eppala China Venkateswarlu and others v. The Secretary to Government, Social Welfare (F) Department, Government of Andhra Pradesh, Hyderabad and others**); and

b) admittedly, election to the office of Sarpanch of Gram Panchayat, Jammulapalli has already been held. The petitioner has not impleaded the candidates, who had contested the election, and without issuing notice and hearing them, no order prejudicially affecting the right of those candidates can be passed.

For the reasons stated above, the writ petition is dismissed. However, it is made clear that after declaration of result of the election, the petitioner shall be free to avail appropriate legal remedy under Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994.

As a sequel to dismissal of the writ petition, W.P.M.P.No.18090 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

09.08.2006

ksld

---

[1] AIR 1952 SC 64

[2] AIR 1954 SC 520

[3] AIR 1978 SC 851

[4] 1995 Supp. (2) SCC 305

[5] (1996) 3 SCC 416

[6] (2000) 8 SCC 216